

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 940806 CSET
CONTROLLED SUBSTANCE EXCISE TAX
FOR TAX PERIODS: 1994

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession and cultivation of marijuana. Taxpayer was convicted of possession of marijuana on January 5, 1995. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on August 29, 1994 in a base tax amount of \$116,532.00. Taxpayer filed a protest to the assessment. A hearing on the protest was held by telephone on September 8, 1999. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

Discussion

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession and cultivation of marijuana in the State of Indiana. Taxpayer has the burden of proving that the assessment is incorrect. At the hearing, Taxpayer protested the assessment of tax on the marijuana which was cultivated on a farm across the street from Taxpayer's farm. The police report and trial transcript indicate that string from a kite reel belonging to Taxpayer's daughter was used to tie up plants to camouflage the marijuana growing in the neighbor's farm. Further trial testimony indicates that the police found a large piece of paper with green paint on it and green paint in Taxpayer's pole barn. The police officer's testimony linked that paper and green paint to the green paint and paper used to camouflage the marijuana plants growing at the neighbor's farm. Taxpayer did not uphold his burden of proof. Therefore, the tax properly applies to Taxpayer in this situation.

Finding

Taxpayer's protest is denied.